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November 27, 2002

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: *Ex parte*, WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC
Separate Affiliate and Related Requirements

Dear Ms. Dortch:

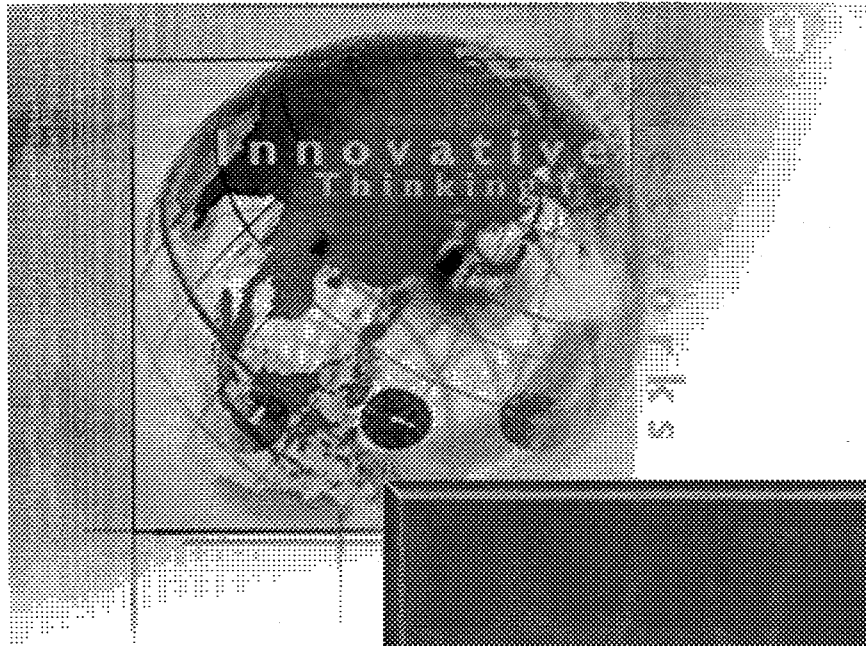
On Tuesday, November 26, 2002, Robert Quinn, Aryeh Friedman and the undersigned of AT&T and David Lawson of Sidley Austin Brown & Wood met with William Maher, Chief-Wireline Competition Bureau, Carol Matthey, Deputy Bureau Chief-Wireline Competition Bureau, Michelle Carey, Chief-Competition Policy Division, Tom Navin, Deputy Chief-Competition Policy Division and Claudia Pabo, Attorney Advisor-Competition Policy Division. The purpose of the meeting was to provide an overview of AT&T's written comments in the above-captioned proceeding. AT&T's views, as expressed in our meeting, were consistent with our written comments. No new arguments were raised during this meeting. The attached outline of our written comments was distributed to the FCC staff present at the meeting.

One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Simone".

cc: W. Maher
C. Matthey
M. Carey
T. Navin
C. Pabo



Section 272 Structural And Accounting Safeguards

AT&T Presentation
November 26, 2002



Summary

- BOCs Asking for Removal of Accounting, Affiliate Transaction Safeguards When Other Agencies Strengthening Such Protections
- BOCs Retain Market Power, Dominance Even Years After 271 Authorization (NY, Tex.)
- BOCs Have Incentives And Demonstrated Ability To Discriminate and Misallocate Costs
- § 272 Is A Unique Enforcement Tool That Provides Transparency (PUCs Want To Retain)



BOCs Have Greater Incentives And Ability To Harm InterLATA Market

- “Fundamental Postulate” Of Telecommunications Law Is That LECs Have “Both The Incentive And Ability To Discriminate Against Competitors”
- BOCs Have Long History Of Discrimination, Accounting Gimmicks To Favor Affiliates
- Once LD Authorization Provided, BOCs’ Incentives To Prefer Its LD Affiliate And Harm New InterLATA Rivals Become Much Stronger



§ 272 Is A Critical Pro-Competitive Tool

- § 272 of “Crucial Importance” To Preserve A “Level Playing Field” in InterLATA Market
- Congress Designed Section 272 To Apply After 271 Entry, Until BOC Dominance Of Local Markets Ceases
- Intended To Detect And Help To Prohibit BOCs’ Ability To Discriminate, Raise Rivals’ Costs



BOCs Dominate Local Markets

- Even In New York, 3 Years After LD Entry, Verizon Has Market Power In Local Services
- Particularly In Special Access, Key LD Input
NYPSC: Verizon “Continues To Dominate”
- SBC Controls Local Market In Texas; Other States (Okla./Kan.) Lag Even Farther Behind
- Overwhelming Evidence That It Takes More Than 3 Years For Full Competition To Develop
- BOCs Able To Discriminate, Cross-Subsidize



§ 272: Practical Enforcement Tool

- As State PUCs Confirm, § 272 Provides Transparency Of Accounting, Affiliate Transactions, Performance Measures
- No Way To Discover BOC Violations Absent Structural, Accounting Safeguards
 - E.g., Identifying Cost/Revenue Data “Critical” To Rate Review (Pa. PUC)
 - *SBC/Ameritech Merger Order* ¶¶ 206, 211, 220, 260 (Use of Separate Affiliate For Advanced Services “will mitigate substantial risk of discrimination”)
- Other Tools Not As Effective
 - Audits Have Yet To Be Conducted Properly (Despite Inadequacies, Material Violations Still Uncovered)
 - LEC Mergers Have Reduced Benchmarking, Hindering Regulators



Costs Of Compliance Small

- BOCs' Claims Of High Compliance Costs Have Never Been Substantiated
 - Verizon Data On OI&M Costs Withheld
- Structural Separation Used In Mergers As Cost-Effective Method To Police Misconduct
- Safeguards Ease Enforcement Actions
- Less Costly Than Other Remedies
- Has Not Hindered BOC Entry in LD



Ample Evidence Of BOC Misconduct

- Special Access Performance Is Discriminatory And Rates Are Excessive
 - NYPSC Report: “below . . . acceptable quality” and Verizon “treats other carriers less favorably” Audit found similar problems
 - AT&T has shown that BOC on-time performance *decreasing* over time
- Ability To Manipulate PIC Process
- Cost Misallocation: Evidence of Price Squeezes, Unlawful Affiliate Transfers
 - California Audit: Joint Marketing “clearly demonstrates cross-subsidization;” Affiliate obtain free access to BOC databases



Conclusions

- Extend § 272 Requirements For At Least An Additional 3 Years
- Retain OI&M Rules
 - sharing of these “core functions” would create “substantial opportunities” for cost misallocation and “inevitably” result in discriminatory treatment (Non-Accounting Safeguards Order)
- BOC “Regional” Sunset Theory Has No Statutory Basis
- Improve Audits, 272 Enforcement

